

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1301 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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WAGHELA DIPUJI JESINGHJI

Versus

STATE OF GUJARAT & ANR.  
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Appearance:

MR DM THAKKAR for Petitioner

MR NN PANDYA for Respondent No. 1  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/07/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner, a Police Constable in the Police Department, State of Gujarat, filed this Special Civil Application, challenging therein, the action of the respondent in not

giving him promotion to the post of Head Constable from the date when his juniors were promoted. It is not in dispute that during the pendency of this Special Civil Application, the petitioner has been promoted to the post of Head Constable on 18.4.89. The petitioner, in this Special Civil Application, has not given out the specific date on which his juniors were promoted as Head Constables. Reply to this writ petition has been filed by the respondents and therein they have come up with the case that the promotions have been given in the year 1978-79 and the case of the petitioner has been considered for promotion but he was not found suitable by the Departmental Promotion Committee and accordingly, he was not given promotion. In the reply, it has further been stated that the petitioner was having four minor punishments in his service record and taking into consideration those minor punishments, the Departmental Promotion Committee has not considered him to be fit for promotion. The respondents have further come up with the case that the petitioner's case was considered twice by the Departmental Promotion Committee in its meetings held on 15.9.78 and on 9.8.79, but on both occasions, the petitioner was found unfit and as such, this writ petition suffers from vice of delay and laches. The learned counsel for the respondents has further contended that in case relief as prayed for is granted to the petitioner, then the rights of those persons who are senior to the petitioner will be infringed and those persons will have to suffer as they will become junior. Moreover, those persons are not impleaded as party to this writ petition.

2. I have considered the submissions made by the learned counsel for the respondents. In the presence of four penalties, though minor, the decision of the Departmental Promotion Committee, adjudging the petitioner not suitable for promotion, cannot be said to be arbitrary. On the basis of service record of the petitioner, the Departmental Promotion Committee has to make assessment regarding his suitability for promotion to the post of Head Constable and in case in the presence of four minor penalties, the petitioner has been adjudged unsuitable for promotion, this Court will not sit as an Appellate Authority over the decision of the Departmental Promotion Committee. The petitioner has a right of consideration for promotion, which right admittedly has not been denied. It is a different matter that because of adversity in service record, the petitioner could not get promotion.

3. Normally after admission of the Special Civil

Application, the same should not be dismissed on the ground of delay and latches, but in case where relief is granted to the petitioner at such a belated stage, it may adversely effect the seniority and other future chances of promotions of seniors, it should be considered seriously. I find sufficient merits in the contention of the learned counsel for the respondents that in case relief as prayed for by the petitioner at such a belated stage is granted, then it will effect the seniority of the persons who are not before this Court and they have acquired their right in the seniority for future promotions. This writ petition thus suffers from defect of delay and latches also and in case relief is granted to the petitioner as prayed for, it will certainly affect the seniority and other future chances of promotions of the persons who are not before this Court also. The delay and latches made in approaching to this Court not only defeats the remedy but also right in appropriate case.

4. Taking into consideration totality of the facts and circumstances of the case, I do not find any substance in this Special Civil Application and the same is therefore dismissed. Rule is discharged.

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(sunil)